

Appendix A

Penalty Matrix Guidance

Stormwater Enforcement Public Rule PUT-8-23 (PR)

The water quality inspection process is designed to approach the goal of compliance with stormwater, groundwater, and surface water regulations in a progressive manner, from education to formal enforcement, and emphasizes outreach, education, and technical assistance as the primary tools to attain compliance. When it is necessary to assess a penalty against a responsible party, the inspection program uses guidelines to assist the inspector in making clear, consistent, and appropriate decisions about the nature of each individual violation. Inspectors are discouraged from engaging in speculation, and are encouraged to assign fewer points when there is a lack of clarity regarding specific of a violation.

1. Environmental or resource damage?	
0	If there is no evidence of detrimental impact or potential threat to water or sediment quality, human health, or the environment.
1	If there is evidence of a minor detrimental impact or potential threat to water or sediment quality, human health, or the environment.
2	If there is evidence of a moderate detrimental impact or potential threat to water or sediment quality, human health, or the environment.
3	If there is evidence of a major detrimental impact or potential threat to water or sediment quality, human health, or the environment.

To assess the environmental or resource damage, the inspector should:

- ✓ Inspect the surrounding area to determine if pollution has affected nearby water or land resources. This may require acquiring familiarity with the storm system and points of discharge to surface waters.
- ✓ Determine the amount, concentration, and characteristics of the pollutant(s) with available equipment. Photo document results.
- ✓ Use best professional judgement to assess the scale of cleanup as a possible way to distinguish between moderate and major detrimental impact.
- ✓ Photo document specific evidence in support of a decision.
- ✓ Use Table 1 below as a starting point to determine the potential severity of impact. The table is divided up according to the severity of harm the material may pose to the environment and/or public health. However, the total volume and location of discharge must also be taken into account. The actual impact or threat of a discharge may result in selecting a higher or lower category.
- ✓ Make a reasonable determination about whether a pollutant is a threat to receiving waters. Evidence, either physical or circumstantial, must be present.

Table 1 Environmental and Public Health Impacts

Minor	Moderate	Major
Aquarium or hatchery wastewater	Antifreeze or other automotive products	Acidic or alkaline materials
Domestic animal wastes e.g. pet waste	Batteries	Animal carcasses
Floor wash water	Degreasers or solvents	Any hazardous material or dangerous waste
Heated water	Dyes or other chemicals	Chlorine, bromine or other disinfectants
Trash or debris	Food wastes	Drain cleaners, root killers
Untreated pool or spa water	Livestock waste or wash water	Flammable or explosive materials
Yard waste	Paints, stains, resins, lacquers or varnishes	Metals in either particulate or dissolved form
	Petroleum products	Pesticides, herbicides or fertilizers
	Silt, sediment or gravel	Radioactive material
	Soaps, detergents, ammonia, or soapy wastewater	Recreational vehicle or portable toilet waste
	Steam or carpet cleaning wastes	Sewage
	Swimming pool backwash	
	Vehicle or equipment wash water	

The inspector should not:

- Mark a point that is not justified. If in doubt, the inspector should default to the lower score.

2. Action taken to remedy a problem after a violation occurred?	
0	If the violation was corrected immediately upon discovery.
1	If the violation was corrected after corrective action letter.
2	If the violation was corrected but required more than one follow-up contact.
3	If the responsible party attempted to correct the violation but did not correct it.
4	If the responsible party made no attempt to correct the violation.
5	If the responsible party made an attempt to hide or disguise the severity of the violation.

To assess whether action was taken to remedy a problem after a violation occurred, the inspector should:

- ✓ If existing, have a history of correspondence on hand to remind the responsible party of the timeline identified in the corrective action letter.
- ✓ Use best professional judgement to determine whether the responsible party is making a good faith effort to correct the violation.
- ✓ Document the technical assistance provided during each visit to make sure there is a record of attempts to educate the responsible party.
- ✓ Document the attempt(s) made to correct the violation, even if determined by the inspector to be inadequate.

3. Willful or knowing violation?	
0	If the responsible party did not know and had no reason to know that the action or inaction constituted a violation.
2	If the responsible party appears not to have known but should have known.
3	If it is clear from the circumstances that the responsible party knew.

To assess whether there was a willful or knowing violation the inspector should:

- ✓ Speak with the individual or individuals directly involved in the violation.
- ✓ Speak with the co-workers or associates of the person(s) responsible for the violation.
- ✓ Speak with the supervisor of the persons involved in the violation.
- ✓ Obtain names and contact information for anyone making statements or providing information.
- ✓ If applicable, check lease agreements, permits, training documents, and maintenance manuals for language about responsible operation and maintenance.
- ✓ Determine whether there are standard practices such as a stormwater pollution prevention plan, erosion control plan, or spill plan in place whose purpose is to prevent the violation from happening.
- ✓ Check the facility for posted documentation regarding proper material management and handling practices.

The inspector should not:

- Automatically assume the operator/violator knew the action was a violation.
- Select a score of 3 without confirming that the violator must have known that the action or omission constituted a violation.

4. Violation was a result of improper operation, inadequate maintenance, or inadequate implementation of required best management practices (BMPs) or of a required plan that addresses stormwater management source control BMPs?	
0	If the violation was not the result of inadequate or lack of source control BMPs.
1	If the property lacks or has inadequate source control BMPs, employee training, supplies, or maintenance, resulting in the potential for a prohibited discharge.
2	If the property lacks or has inadequate source control BMPs, employee training, supplies, or maintenance, resulting in the probability of a prohibited discharge.
3	If the property lacks or has inadequate source control BMPs, employee training, supplies, or maintenance, resulting in a prohibited discharge.

To assess whether there was a failure to properly implement source control BMPs, the inspector should:

- ✓ Identify the BMPs required of the specific activity.
- ✓ Consider the maintenance schedule of the BMPs when determining whether the violation could have been avoided.
- ✓ Ask about training records or programs to teach staff how to maintain BMPs.
- ✓ Assess the probability of whether a violation could happen due to inadequate BMPs. Is it more or less likely than not? Consider workplace processes and the likelihood of accidents happening.
- ✓ Is there evidence of a past violation such as staining, erosion, or used cleanup materials?
- ✓ Determine whether the violation would have been prevented if there were appropriate BMPs in place.
- ✓ Assign a score of “0” if the discharge was not the result of inadequate source control BMPs.

5. History of compliance problems on the property or with the potentially responsible party?	
0	If there is no previous history of compliance problems.
1	If only one correction letter has been issued to the property and/or party for a prior violation.
2	If two or more correction letters have been issued to the property and/or party for prior violations.
3	If a Notice of Violation and/or a Notice and Order have been previously issued to this property and/or party for a prior violation.

To assess whether there is a history of compliance problems on the property or with the potentially responsible party the inspector should:

- ✓ Consider “History” to mean the previous 6 years in order to include results of the previous water quality inspection(s) and drainage facility inspections, which generally occur on a 5 and 3 year cycle.
- ✓ Pull and review previous files prior to the site inspection.
- ✓ Make an attempt to ask the responsible party if they are aware of any existing history.
- ✓ Use documented records of violations to asses this score appropriately.

The inspector should not:

- Rely on memory or anecdotal evidence to justify a score greater than “0”.
- Count as a previous violation, any Cease Discharge Order or Notice and Order that was appealed and subsequently reversed.

6. Infrastructure damage or additional maintenance required of conveyance system, drainage facilities, or right-of-way due to violation?	
0	If the violation provides no basis for concluding that there is damage to infrastructure or requires additional maintenance.
1	If there is a basis for concluding that there is minor infrastructure damage or minor additional maintenance required based on knowledge of the effects of the violation.
2	If there is basis for concluding that there is moderate infrastructure damage or moderate additional maintenance required based on knowledge of the effects of the violation
3	If there is evidence linking significant infrastructure damage or significant additional maintenance required with the violation.

To assess whether the violation resulted in damage to infrastructure or whether it required additional maintenance of the conveyance system, drainage facilities, or right-of-way the inspector should:

- ✓ Take photographs for possible review by engineers or other appropriate staff.
- ✓ Use professional judgement to determine whether the need for maintenance or repairs has been caused by the violation.
- ✓ Consider the extent of the violation and weather when assessing the potential need for system maintenance. For instance, if it was raining hard during the violation how much of the pollutant remains in the system, or was it flushed through?
- ✓ Review existing work orders to determine whether the damage to infrastructure had already been identified by another inspection program.

The inspector should not:

- Automatically assume damages are caused by the violation without some concrete evidence.

7. Illicit connection?	
0	If there is no illicit connection.
2	If there is an illicit connection, but was not recognized as such by owner/operator.
3	If there is a known illicit connection, but was not self-created by owner/operator.
4	If there is known illicit connection that was self-created by owner/operator.

To assess whether there is an illicit connection the inspector should:

- ✓ Review plan sets and records.
- ✓ Conduct dye testing if necessary.
- ✓ Talk with the property manager to determine how the connection was made, and whether it was intentional.
- ✓ Determine whether the connection is allowed under another National Pollutant Discharge Elimination System (NPDES) permit.

The inspector should not:

- Automatically assume a given connection is illicit.

8. Economic benefit from non-compliance?	
0	If it is clear that no one gained an economic benefit.
1	If it is likely that someone may have gained a minor economic benefit.
2	If it is likely that someone gained a moderate economic benefit.
3	If it is demonstrable that someone gained a significant economic benefit.

To assess whether there was an economic benefit to non-compliance the inspector should:

- ✓ Consider who may have gained an economic benefit for non-compliance.
- ✓ Determine whether the responsible party actively pursued an alternative method for managing pollution-generating materials that led to the violation but chose not to use them.
- ✓ Assess whether the details are available to allow for an accurate estimate of the total benefit gained (cost of proper disposal, cost of BMPs that could have prevented the violation, operational costs saved by not responding appropriately, etc.).

The inspector should not

- Attempt to quantify the economic benefit onsite and without consulting the source control program manager or designee.
- Assume that the economic benefit was the reason for the violation. Often violations can be related to accidental discharges for which economic benefit is not a factor.

Penalty Charges

Use the table below to determine penalty amounts, adding up points from the violation factors listed above.

Penalty Points Score with Penalty Amount					
Score	≤9 points	10-15	16-21	22-24	>24
Penalty	\$500	\$1000	\$2500	\$5000	\$10,000
Penalty amounts are issued on a per-day basis for ongoing violations.					

All penalty matrix decisions are to be reviewed and approved by source control program staff to ensure consistency of application.